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May 21, 2008

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The Hon. Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: *Report on Broadcast Localism and Notice of Proposed Rulemaking*  
in MB Docket No. 04-233

Dear Chairman Martin:

The audio and video markets have never been more competitive. Yet the *Localism Report* suggests the Federal Communications Commission (FCC) is considering re-imposing broadcast regulations that the FCC appropriately eliminated more than 20 years ago on the grounds that market forces would better serve localism. Resurrecting these outdated obligations would not only fail to accomplish the stated objectives, it would harm them by shackling broadcasters with costly and unnecessary rules that do not apply to their competitors. We urge the Commission to stay the course, rather than ignore the marketplace realities of the past two decades.

Indeed, in the 1984 *Television Deregulation Order*, 98 F.C.C.2d 1076, the Commission said that formal ascertainment requirements were "neither necessary nor, in view of significant costs, appropriate." The FCC noted that "licensees become and remain aware of the important issues and interests in their communities for reasons wholly independent of ascertainment requirements." According to the FCC, even in 1984, "market forces provide[d] adequate incentives for licensees to remain familiar with their communities. Moreover, future market forces, resulting from increased competition, will continue to require licensees to be aware of the needs of their communities." Meanwhile, "[t]he resources which the licensee is forced to expend to satisfy procedural requirements are lost from other potentially beneficial activities, such as program production in response to determined needs." Consequently, the FCC eliminated the ascertainment requirements.

In the same order, the FCC eliminated certain renewal application processing guidelines. The FCC did so on the grounds that "licensees will continue to supply informational, local and non-entertainment programming in response to existing as well as future marketplace incentives, thus obviating the need for the existing guidelines." Moreover, the processing guidelines presented "several inherent disadvantages, including: potential conflicts with Congressional policies expressed in the Regulatory Flexibility Act and the Paperwork Reduction Act [as well as] imposition of burdensome

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Letter to the Honorable Kevin Martin

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compliance costs." More distressingly, they presented "possibly unnecessary infringement on the editorial discretion of broadcasters, and [a] distortion of the Commission's traditional policy goals in promulgating and monitoring programming responsibilities." According to the FCC, "[t]he Commission's traditional policy objectives with respect to programming have never been fulfilled by the presentation of mere quantities of specific programming. On the contrary, the Commission has consistently sought to avoid this type of regulatory approach." While the processing guidelines proposed in the *Localism Report* may not directly regulate broadcaster content, they create a perverse incentive to air programming aimed at satisfying the government, and not local communities. The First Amendment concerns that caused the Commission to abandon programming guidelines two decades ago are just as relevant today.

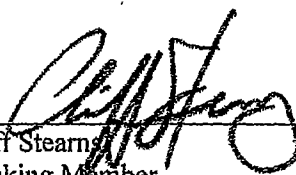
The recent *Localism Report* also suggests the Commission may reverse changes to the Main Studio Rule. Currently, broadcasters have the flexibility to place their main studio anywhere within their signal contour. This has enabled many broadcasters to more efficiently and effectively serve their local communities. In the 1987 *Radio and Television Main Studio Rule Order*, 2 FCC Red 3215, the FCC determined that because of marketplace changes, the Commission no longer believed that rules forcing location of "main studio facilities within the political boundaries of the community of license necessarily promote responsive programming." It also determined that a main studio within the community of license was "no longer required to assure that a station is physically accessible to residents," in large part because of advances in telecommunications and transportation. Broadcasters that have come to rely on changes to the Main Studio Rule would suffer substantial costs with no corresponding benefit if the FCC now reversed course.

Broadcasting should serve the needs and interests of its local citizens, but the changes proposed in the *Localism Report* will not achieve that goal. In fact, they would have the opposite effect. Considering the many technological advances and changes that have taken place in the media marketplace over the past several decades, these proposed rule changes ignore not only FCC precedent, but the stark realities of the media business as it exists today. We strongly encourage the Commission to reconsider these proposed rule changes.

Sincerely,



Joe Barton  
Ranking Member  
Committee on Energy and Commerce



Cliff Stearns  
Ranking Member  
Subcommittee on Telecommunications  
and the Internet

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell